

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY P. LOWENSTEIN,

Defendant.

No. CR 03-1324-TUC-CKJ
CR 04-688-TUC-CKJ

ORDER

On October 23, 2006, and January 8, 2007, this Court received evidence and heard argument on Defendant's Motion for Return of Property. The Court took the matter under advisement.

Fed.R.Crim.P. 41(g) was designed to provide a method for persons to seek the return of property unlawfully seized by federal law enforcement officials. *Mora v. United States*, 995 F.2d 156, 158 (2nd Cir. 1992). The rule also provides that a person aggrieved by the deprivation of property may seek its return. This Court has jurisdiction "to entertain motions to return property seized by the government when there are no criminal proceedings pending against the movant." *United States v. Martinson*, 809 F.2d 1364 (9th Cir. 1987); *but see Ramsden v. United States*, 2 F.3d 322 (9th Cir. 1993) (district court must exercise caution and restraint before exercising jurisdiction over preindictment motion).

Suitcase and its Contents

During the hearing, Defendant ceded that he did not have a claim as to the suitcase and its contents and withdrew that claim. In any event, this claim is barred by the statute of

1 limitations and for lack of subject matter jurisdiction under the Federal Tort Claims Act. 28
2 U.S.C. §§ 2401(b) and 2680(c).

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4 *Video Tapes Seized from Defendant's Home*

5 Defendant alleges that agents seized certain family videos from his residence during
6 a search. Defendant alleges that these video tapes were never returned to him.

7 In *United States v. Marshall*, 338 F.3d 990 (9th Cir. 2003), the court found that where
8 the government never actually seized the property, Fed.R.Crim.P. 41 was not the appropriate
9 method to seek redress. Here, Victoria de Mar Lowenstein testified that she was present
10 during the search and that the agents removed tapes, but she did not believe they took all of
11 them. Ms. Lowenstein further testified that she had not viewed the home movies for a long
12 time prior to the search and did not know when she first noticed that some tapes were
13 missing. Ms. Lowenstein also testified that she does not recall all of the things that she
14 placed in storage. Agent Eric Daniel McLoughlin testified that he participated in the search
15 of the Lowenstein residence. Agent McLoughlin testified that standard procedure included
16 listing those items seized on the inventory. Agent McLoughlin further testified that, because
17 the video cassettes were not on the inventory, it did not appear that the tapes were seized by
18 the agents. The photographs taken of the seized property on the day of the search do not
19 show the home movies Defendant claims were taken by agents. The Court finds that
20 Lowenstein has not presented sufficient evidence to demonstrate that the government seized
21 the video tapes and, therefore, Lowenstein is not entitled to relief pursuant to Fed.R.Crim.P.
22 41.

23 Accordingly, IT IS ORDERED the Motion for Return of Property Pursuant to
24 Fed.R.Crim.P. 41 is DENIED.

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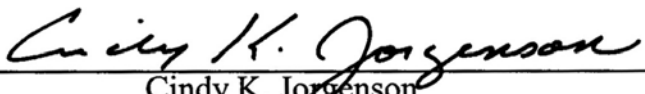
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1 IT IS FURTHER ORDERED the Clerk of the Court shall mail a copy of this Order
2 to Lowenstein at the following address:

3 Anthony Lowenstein, Inmate No. 11343-196
4 Building 5828, Third Floor
5 Federal Correction Institution
6 P.O. Box. 7000
7 Fort Dix, New Jersey 08740

8 DATED this 22nd day of January, 2007.

9 
10 Cindy K. Jorgenson
11 United States District Judge
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